

JAMES R. BRAYMEN

IBLA 82-1038

Decided September 16, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. I MC 26264.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, and recorded with BLM on or before Oct. 22, 1979, must file a notice of intention to hold the claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the annual statement is filed. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it becomes lost in the mail, the loss must be borne by the claimant.

APPEARANCES: James R. Braymen, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

James R. Braymen appeals the June 24, 1982, decision of the Idaho State Office, Bureau of Land Management (BLM), which declared the unpatented Iron Duke #10 lode mining claim, I MC 26264, abandoned and void because evidence of assessment work or notice of intent to hold the claim was not filed with BLM on or before December 30, 1981, as required by 43 CFR 3833.2-1, implementing section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The evidence of assessment work was received by BLM June 30, 1982.

Appellant alleges the copy of the proof of labor for his claim was mailed to BLM after recording it in Bonner County, Idaho, September 30, 1981, although appellant states he does not recall the address in Boise to which he mailed the instrument.

[1] Section 314 of FLPMA and the implementing regulations, 43 CFR 3833.2-1 and 3833.4, require that evidence of assessment work for each assessment year be filed in the proper BLM office within the specified time limits, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely filed with BLM.

Despite appellant's statement that the document was timely mailed, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 3833.1-2(a). Thus, even if the document was mailed and an error by the Postal Service prevented it from reaching the BLM office timely, that fact would not excuse appellant's failure to comply with the cited regulations. Magdalene Pickering Franklin, 57 IBLA 244 (1981); Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980). The Board has repeatedly held a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filing. Magdalene Pickering Franklin, *supra*; Everett Yount, *supra*. Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f).

This Board has no authority to excuse lack of compliance with the statutes or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Will A. Irwin  
Administrative Judge

